



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 April 2005

8329/05

**Interinstitutional File:
2004/0166 (AVC)**

LIMITE

**DOCUMENT PARTIALLY
ACCESSIBLE TO THE PUBLIC**

**FC 20
CADREFIN 85**

NOTE

from : Presidency
to : Structural Actions Working Party

No. prev. doc. : 7172/05 FC 12 CADREFIN 45
6889/05 FC 11 ECOFIN 72 UEM 75 CADREFIN 37

No. Cion prop. : COM(2004) 494 final (11637/04 FC 5 CADREFIN 23)

Subject : Proposal for a Council Regulation establishing a Cohesion Fund

Delegations will find in Annex to this note the text of the draft Cohesion Fund Regulation as it resulted from the Working Party on 8 April 2005.

Proposal for a

COUNCIL REGULATION

establishing a Cohesion Fund

THE COUNCIL OF THE EUROPEAN,

Having regard to the Treaty establishing the European Community, and in particular Article 161(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the assent of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

- (1) Regulation (EC) No [...] laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund¹, establishes the framework for the action of the Structural Funds and the Cohesion Fund. It fixes, in particular, the objectives, the principles² and the rules concerning partnership, programming, evaluation and management. It is therefore necessary to specify the mission of the Cohesion Fund in relation to this new framework and to the purpose assigned to it in the Treaty and to repeal, for the sake of clarity, Council Regulation (EC) No 1164/94 of 16 May 1994 establishing the Cohesion Fund³.
- (2) Trans-European network projects financed from the Cohesion Fund must fit the guidelines for these networks adopted by the Council and the European Parliament. In order to concentrate the efforts, priority shall be given to projects of European interest as defined in Decision No 1692/96/EC of the European Parliament and the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network⁴.
- (3) The Community may, through the Cohesion Fund, contribute to action in pursuit of the Community's environmental policy objectives specified in Article 174 of the Treaty. Under Article 175(5) of the Treaty and without prejudice to the principle that the polluter should pay, the Council can decide, in the case of measures on the basis of paragraph 1 of that Article which are deemed to involve disproportionate costs for the public authorities of a Member State, that the measure is to be aided from the Cohesion Fund.
- (4) Granting of assistance from the Cohesion Fund must take due account of the priorities of the enlarged Union, in particular those set by the Göteborg European Council on the environment in the interests of sustainable development.

¹ OJ L [...], [...], p. [...].

² A new recital could be added to clarify that the Cohesion Fund may fund the technical assistance of Member States, although it is stated clearly in Article 44 of the draft General Regulation.

³ OJ L 130 of 25.5.1994, p. 1, Regulation as last modified by the Accession Act of 2003

⁴ OJ L 228 of 9.9.1996, p. 1 **as amended by Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004.**

- (5) Regulation (EC) No [...] provides that eligibility of expenditure is to be established at national level, with certain exceptions, for which it is necessary to lay down specific provisions. The exceptions concerning the Cohesion Fund should therefore be laid down.
- (6) Conditionality provisions in the granting of financial assistance will continue to apply in conjunction with the fulfilment of the conditions of economic convergence as set out in article 99 of the Treaty and the need for sound government finances. In this respect, Member States **having adopted the euro are to implement stability programmes and Member States not having adopted the euro convergence programmes**, as defined in Council Regulation (EC) n° 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, leading to the **avoidance of excessive government deficits** referred to in Article 104 of the Treaty. **At the same time, the conditionality provisions should not apply to the operations that had already been approved at the time of suspension.**

HAS ADOPTED THIS REGULATION:

Article 1

Creation and purpose of the Cohesion Fund

1. A Cohesion Fund (hereinafter: the Fund) is hereby set up for the purpose of strengthening the economic, social [and territorial]¹ cohesion of the Community in the interests of promoting sustainable development.
2. The Fund shall contribute to the financing of programmes, which support the objectives set out in the Treaty.
3. The Fund is governed by the provisions of Regulation (EC) No [...] and by the provisions of this Regulation.

Article 2

Scope of assistance²

1. Assistance from the Fund shall be given in the following areas ensuring an appropriate balance and according to the investment and infrastructure needs specific to each Member State receiving assistance:
 - a) trans-European transport networks, in particular priority projects of European interest as identified by Decision No 1692/96/EC;

¹ To be kept in the text if the draft Constitutional Treaty is ratified before the adoption of this Regulation. **DELETED** suggested keeping the original Commission wording.

² Article 5 (3) of the draft General Regulation should be completed as follows: "***Those Member States shall continue to be eligible for assistance from the Fund provided that, after a mid-term review in 2010, their GNI remains below 90 % of the Community average. Any eligible Member State whose GNI exceeds the 90 % threshold at that time shall lose its entitlement to assistance from the Fund for new projects or, in the case of important projects split into several technically and financially separate stages, for new stages of a project.***"

- b) achievement of the objectives of Article 174 of the Treaty falling within the priorities assigned to the Community environmental protection policy under the policy and action programme on the environment.

In this context, the Fund's assistance may¹ intervene in areas related² to sustainable development which clearly present environmental benefits, namely energy efficiency and renewable energy and, in the transport sector³ outside the trans-European networks, ⁴rail, river, [...] sea **and air** transport, intermodal transport systems and their interoperability, management of road, **sea** and air traffic, clean urban transport and public transport⁵.

2. The appropriate balance of actions should be agreed in partnership between Member States and the Commission⁶.

¹ **DELETED** suggested adding "also".

² **DELETED** entered a scrutiny reservation on this new formulation.

³ **DELETED** considered that ports and airports in the outermost regions should be covered by this provision.

⁴ **DELETED** suggested adding "road".

⁵ The Council Legal Service (CLS) representative indicated that the extension of the scope of assistance, proposed by the Commission, was compatible with the Treaty, nevertheless **DELETED** asked for a written opinion from the CLS. **DELETED** also questioned the need for such an extension and suggested deleting this subparagraph. **DELETED** suggested an extension of the proposed scope to, for example for **DELETED** : energy conservation, "acquis" related investment or interoperability measures. **DELETED** suggested modifying the drafting in such a way that this paragraph would cover points a) and b). **DELETED** suggested reverting back to the Commission proposal.

⁶ **DELETED** suggested the following drafting "*The appropriate balance provided for in the first paragraph shall be set according to the needs of Member States.*"

Article 3

Rules on eligibility of expenditure

The following expenditure shall be ineligible:

- 1) VAT¹;
- 2) interest on debt;
- 3) the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;
- 4) housing;²
- 5) decommissioning of nuclear power stations.

Article 4

Conditions applying to access to Fund assistance³

1. Assistance from the Cohesion Fund shall be conditional on the following rules.
2. If the Council:
 - a) has **decided** in accordance with Article 104(6) EC that excessive government deficit exists in a beneficiary Member State, and

¹ **DELETED** suggested replacing the text by "*reimbursable VAT*". **DELETED** called for consistency among all Regulations (General, ESF, ERDF and Cohesion Fund) concerning the treatment of VAT.

² **DELETED** suggested adding "*excluding energy-efficient constructions*".

³ The new drafting of the Article reflects the EFC opinion (Doc.6869/05). **DELETED** expressed reservations regarding the close link between the Excessive deficit procedure (EDP), the Treaty Article 104 and the Cohesion Fund, since this would imply the possible suspension of Cohesion Funds as an effective sanction in the EDP that would apply only to the Cohesion countries. **DELETED** entered a reservation on this Article.

b) has **established** in accordance with Article 104(8) EC that the Member State concerned has not taken effective action in response to a Council Recommendation issued under Article 104(7) EC [...],

it **may decide** to suspend either the totality or part of the financial assistance from the Fund for the Member State concerned with effect from 1st January of the year following the decision. The suspension concerns the commitments¹.

3. The Council **shall** decide to lift the suspension of the financial assistance from the Fund if it establishes that the Member State concerned has taken the necessary corrective action. The Commission **shall** proceed to the re-budgetisation of the commitments suspended².
4. The Council **shall** take the decisions referred to in paragraphs 2 and 3 on a qualified majority on a proposal from the Commission.

¹ **DELETED** suggested adding "*for new projects*".

² **DELETED** suggested adding wording indicating on which basis the Commission would propose lifting the suspension having considered that the Member State has taken the necessary corrective action.

DELETED suggested deleting the last sentence and replacing it by the text of Article 18 of the proposal for renewal of the Interinstitutional agreement on budgetary discipline and improvement of the budgetary procedure "*The Council can decide, at the same time this suspension is lifted, on a transfer of suspended commitments to the following years. Suspended commitments of year n cannot be rebudgeted beyond year n+1. The Council decides on a proposal from the Commission.*" The Presidency and the Commission representatives indicated that that reference should remain in the Interinstitutional agreement.

Article 5
Transitional provisions¹

[...]²

1. Applications made under Regulation (EC) No 1164/94 shall remain valid³ **provided such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation within not more than two months as of 1 January 2007.**

¹ **DELETED** indicated the need of more precise rules concerning the transitional period. **DELETED** suggested the following wording for the Article:

2. *Applications made under Regulation (EC) No 1164/94 shall remain valid **and shall be subject to the rules concerning the starting point of eligibility of expenditure laid down in that Regulation.***
3. *If for an operation approved under Regulation 1164/94 the amounts committed until 31 December 2006 are below the maximum amount of assistance as set in a granting decision for the operation, the Member State concerned shall include continuation of such operation in an operational programme for the Cohesion Fund. The amounts for continuation of such operations shall be excluded from the amounts subject to automatic decommitment under Art. 92 of Regulation No [...].*

² This paragraph has been deleted as Article 106 (1) of the draft General Regulation (doc.8330/05) includes the transitional provisions for both the Structural and Cohesion Funds.

³ **DELETED** suggested adding "*and shall be subject to the rules concerning the starting point of eligibility of expenditure laid down in that Regulation*"

Article 6

Repeal¹

Without prejudice to the provisions laid down in Article 106 (1) of Regulation (EC) No [laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund], Regulation (EC) No 1164/94 is hereby repealed with effect from 1 January 2007².

References to Regulation (EC) No 1164/94 shall be construed as reference to this Regulation.

Article 7

Review

The Council shall review this Regulation by 31 December 2013 at the latest in accordance with Article 161 of the Treaty.

¹ **DELETED** proposed considering as eligible expenditure all project preparation costs occurred in relation to a project starting after 1st January 2007. As a second best option, they proposed that the current rule should be maintained and the eligibility period should start with the presentation of the OP to the Commission.

² **DELETED** suggested adding "*excepting the effects produced on projects approved before 31 December 2006.*"

Article 8
Entry into force¹

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...].

For the Council
The President
[...]

¹ **DELETED** suggested adding a new paragraph to read as follows : "*Eligibility of expenditure may commence 6 months prior to the entry into force of this Regulation.*"